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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,880	04/09/2004	Adrianus Cornelis Kruik	88265-7114	9267

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BELL, BOYD & LLOYD LLC
P. O. BOX 1135
CHICAGO, IL 60690-1135

EXAMINER	
TRAN LIEN, THUY	
ART UNIT	**PAPER NUMBER**
1761	

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/820,880	KRUIK ET AL.	
	Examiner	Art Unit	
	Lien T. Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 June 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 6-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 6-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claims 1 and 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed 6/27/05, applicant amends claim 1 to include the limitation " with the exclusion of emulsifier". Applicant also amends claim 16 to include the limitation "without adding any emulsifier". These limitations are not supported by the original disclosure. The specification does not disclose anything about mixing without an emulsifier or excluding emulsifier.

Claims 1, 6-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In all relevant claims, the term " biscuit like" is indefinite because the meaning and scope of such language cannot be determined. It is not known what would be considered as biscuit-like; is it the taste, the texture, the composition, the look or what?

Claims 1, 6-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Werbin et al (3508926).

Werbin et al disclose a method of using baked goods containing gelatinized starch and product formed by such method. The method comprises the steps of reducing a food material to granular or powdered form, mixing the particles with shortening material admixed with at least one emulsifier and forming the mixture into a

mass of agglomerated product. The shortening include natural or hydrogenated animal or vegetable oil or fat. The agglomerated mixture can be formed to pieces which are added to soft ice cream. (see col. 2 lines 40-45, examples 3 and 7)

Werbin et al do not specifically disclose biscuit, the properties as recited in claim 1, the amount of fat in claim 4, the property of the fat as in claim 5, the inclusion of other ingredients, the amount of overrun as in claims 9-10, the making of the confection as in claims 11, 17, the inclusion of other material in the ice confection as in claims 12-14, the form of the confection as in claim 15, the mixing temperature as in claim 16 and the forms as in claims 18-19.

The limitation of without an emulsifier or with the exclusion of emulsifier does not define over Werbin et al. It is not clear what emulsifier the claims are intended to exclude because the specification does not disclose anything about excluding emulsifier. The emulsifier disclosed in Werbin et al can be egg yolk which is a typical ingredient for baked product. Applicant's claims do not exclude other ingredients. Werbin et al disclose baked goods and discuss biscuits, cookies in the back ground section. Thus, it would have been obvious to use biscuit , cookies because there are included in the baked good group. When baked biscuit particles or any other baked good particles are mixed with the fat, it is obvious the mixture will have the same property as in claim 1 because the same materials are used. It is also obvious the fat will have the solid fat content as in claim 5 because Werbin et al disclose the same fat as claimed. It would have been obvious to vary the fat content when desiring to alter the taste, texture, consistency of the mixture. It would also have been obvious to add

other food ingredients to enhance the taste of the product; the selection of the type of ingredients and the amounts can vary depending on the taste and flavor desired. It would have been obvious to use any known method to make the frozen confection; both molding and extrusion are well known in the art. It would also have been obvious to have any varying percent of aeration depending on the texture desired for the product. It would have been obvious to include other inclusion to enhance the taste of the ice confection; this is notoriously well known in the art. It would have been obvious to form the ice confection in forms such as bar, cup, stick, cone because all these form are common for ice confection product. It would have been within the skill of one in the art to determine the appropriate temperature of the fat so that it can be easily mixed with the particles. This can readily be determined through routine experimentation. It would have been obvious to form the ice confection as the shell or the biscuit particles as the shell depending on the type of confection wanted. If more ice confection is wanted and the particles are intended as small amount of inclusion, it would have been obvious to form a shell of confection and then filling the shell with the particles. It would also have been obvious to do the reverse because it is well known in the art to use cookie crumb to make shell for various type of filling. For example, it is well known to use cookie crumb to make crust and to use the crust in making mud pie with different types of ice cream. The concept of removing portion of a molded product to create an open cavity is well known in the art. Bread is made into soup bowl by removing portion of the bread dough, melon is made into bowl by scooping out the inside fruit, cake bowl is made by removing a portion of the cake to create cavity for fruit filling etc.. It would have been

obvious to one skilled in the to create such cavity when one wants to make product containing open cavity filled with ice cream. Ice confections come in many different shapes and forms; one can readily see this in a supermarket or ice cream novelty store. It would have been obvious to one skilled in the art to make the various forms claimed because they are well known in the art. It would have been within the skill of one in the art to determine the temperature to pour the particles through routine experimentation in absence of showing of unexpected result or criticality.

The obviousness-type double patent rejection is hereby withdrawn because application 10/761614 is now abandoned.

In the response filed 6/27/05, applicant argues the term " biscuit-like" is not indefinite because the specification recites that the mass is generally a liquid that is pumpable at about 15-35 degree C and has a soft to crispy consistency at ice confectionery temperature of about –10 degree C to –25 degree C. These statements give the properties of the product; it does not define what " biscuit-like " means. If the product is made from baked biscuit, then it is a biscuit product; thus, it is not clear what is mean by " biscuit-like mass". The term does not make the claims clearer.

With respect to the 103 rejection, applicant argues the claims are amended to exclude emulsifier which is required by Werbin. This argument is not persuasive. The limitation of without an emulsifier or with the exclusion of emulsifier does not define over Werbin et al. It is not clear what emulsifier the claims are intended to exclude because the specification does not disclose anything about excluding emulsifier. The emulsifier disclosed in Werbin et al can be egg yolk which is a typical ingredient for baked product.

Applicant's claims do not exclude other ingredients. The term emulsifier is used broadly in the art and the exclusion of which does not define over the prior art unless specific emulsifiers are given. For example, fat such as hydrogenated vegetable oil is known to be used as emulsifier. For instance, patent no. 6849280 and 6835397 both list hydrogenated vegetable oil as emulsifier. In the claimed product, when a mixture of fat comprising hydrogenated vegetable oil and fractionated palm oil are used, the hydrogenated vegetable oil can be an emulsifier. Applicant further argues the claimed invention does not need a rewetting or subsequent drying step. The process as claimed does not exclude additional steps.

Applicant's arguments filed 6/27/05 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 13, 2005

LIEN TRAN
PRIMARY EXAMINER
Group 1700